

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-322
Table of Allotments,)	RM-10332
FM Broadcast Stations.)	
(Fremont and Sunnyvale, California))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: June 5, 2002**Released: June 14, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the Notice of Proposed Rule Making, DA 01-2737, released November 23, 2001 [66 FR 63654 (December 10, 2001)] (“Notice”), issued in response to a petition for rule making filed by Chase Radio Properties, L.L.C. (“Chase”) licensee of Station KCNL(FM), Channel 285A, Fremont, California. Chase requested the reallocation of Channel 285A to Sunnyvale, California, as that community’s first local aural transmission service, and the modification of Station KCNL’s license to specify Sunnyvale as its community of license. Chase filed comments reaffirming its proposal and reiterating its intent to implement its proposal if the reallocation of Channel 285A to Sunnyvale occurs. No other party filed comments in this proceeding. For the reasons stated below, we grant Chase’s request to change its community of license to Sunnyvale.

2. Chase filed its request to reallocate Channel 285A to Sunnyvale, California, pursuant to the provisions of Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹

3. The Notice in this proceeding observed that Chase argues that the reallocation of Channel 285A from Fremont to Sunnyvale is to be preferred under the Commission’s allotment priorities because it would provide Sunnyvale with its first local aural transmission service (priority 3).² Sunnyvale is located within the San Jose Urbanized Area. In this light, Chase provided information to demonstrate that Sunnyvale is independent of San Jose, pursuant to the criteria set forth in Faye and Richard Tuck (“Tuck”), 3 FCC Rcd 5374 (1988), and warrants being considered as a first local aural transmission service under priority (3).³ Those criteria include (1) signal population coverage; (2) the size and proximity of the suburban community to the central city; and (3) the interdependence or independence of the suburban community to the central city of the urbanized area. 3 FCC Rcd 7374 at 5377-78.⁴

¹ See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

² See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

³ See also Huntington Broadcasting Co. v. FCC (“Huntington “), 192 F.2d 33 (D.C. Cir. 1951).

⁴ In Tuck, the Commission set forth eight factors in assessing the independence of a specified community: (1)

4. With regard to the Tuck criteria, the city of Sunnyvale is located eleven miles northwest of San Jose, California. The facilities proposed by Chase at Sunnyvale would place a 70 dBu contour over more than 50 percent of the San Jose Urbanized Area. There are no white or gray service areas within the proposed gain or loss areas. All of the gain area currently receives well over five aural services, and all of the loss area will continue to receive over five aural services. Further, Fremont, the community to which Station KCNL is currently assigned, will continue to be the community of license of Station KOHL(FM), operating on Channel 207A. Sunnyvale is an incorporated community with a 2000 U.S. Census population of 131,760 persons. Sunnyvale's independence from San Jose is demonstrated by the facts that it has its own city government including an elected mayor and city council (factor 4 under the Tuck factors, supra at note 4) and provides its residents an extensive variety of municipal services, including its own police and fire departments, public schools, senior center and community center (factor 8 under the Tuck factors). Sunnyvale also has numerous commercial facilities as well as numerous offices for physicians, dentists and other health care professionals (factor 6 under the Tuck factors). In this regard, Chase asserts that Sunnyvale has about 100 restaurants, 15 banks, and 140 dry cleaning establishments. Sunnyvale has five of its own zip codes and two post offices, thus satisfying Tuck factor 5.⁵ Sunnyvale satisfies Tuck factor 2 because it has one weekly newspaper and its own web site. As to Tuck factor 1 which asks to what extent community residents work in Sunnyvale, Chase notes that at least 50 companies ranging in size from Lockheed Martin Corporation and TRW, Inc. to the Camino Medical Group and Montgomery Ward, have facilities in Sunnyvale that employ 200 or more persons. Chase also asserts that the Sunnyvale Chamber of Commerce claims that employment is also provided by more than 8,000 companies located in Sunnyvale. Thus, it is clear that the substantial opportunities for employment in Sunnyvale suggest that Sunnyvale is not dependent on San Jose for its residents' employment.⁶ Under Tuck factor 3, which asks whether community leaders and residents perceive the community as distinct from the central city of the relevant urbanized areas, Chase explains that Sunnyvale's web site claims that the national media and local employers view Sunnyvale as its own entity. Thus, for example, Chase asserts that Sunnyvale has received a number of accolades for its unique approach to business and its residents' quality of life, including recognition as the "Most Attractive American Big City In Which to Operate a Business" by Business Development Outlook Magazine.

5. We note that we have considered a community as independent when a majority of the Tuck factors demonstrate that the community is distinct from the central city of the urbanized area. See, e.g., Parker and St. Joe, Florida, 11 FCC Rcd 1095 (1996). Sunnyvale has clearly met this standard. In light of the evidence described in the preceding paragraph of this Report and Order, we conclude that Sunnyvale, although located within the San Jose Urbanized Area, should be treated as a separate and distinct community and should not be credited with transmission services licensed to San Jose.

the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

⁵ See Jupiter and Hobe Sound, Florida, 12 FCC Rcd 3570, 3572-3573 (1997).

⁶ See Jupiter and Hobe Sound, Florida, supra.

6. Having made the foregoing decisions, we must determine whether Chase's proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangements of allotments using the allotment priorities set forth in Revision of FM Assignment Policies and Procedures, *supra* at note 2. Since Sunnyvale would receive its first local aural transmission service (priority 3), Chase's proposal to serve Sunnyvale is favored over the retention of the allotment at Fremont (priority 4). In this regard, we observe that Fremont would still retain local aural transmission service because it would continue to be served by Station KOHL(FM), operating on Channel 207A. Based upon the foregoing, we believe that the public interest would be served by reallocating Channel 285A from Fremont to Sunnyvale. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station KCNL(FM) to specify operation on Channel 285A at Sunnyvale, California.

7. As stated in the Notice, Channel 285A can be allotted to Sunnyvale, California, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing Chase's requested site at the coordinates of 37-18-41 North Latitude and 121-48-58 West Longitude.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 29, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Fremont, California	-----
Sunnyvale, California	285A

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Chase Radio Properties, L.L.C. for Station KCNL(FM), Fremont, California, IS MODIFIED to specify operation on Channel 285A at Sunnyvale, California, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

10. Pursuant to Commission Rule Section 1.1104(l)(k) and (3)(m), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Chase Radio Properties, L.L.C., licensee of Station KCNL(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

11. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

12. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
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Media Bureau